

Department of Health and Human Services

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acquisition threshold shall include the following at a minimum: (a) Basis for contractor selection, (b) justification for lack of competition when competitive bids or offers are not obtained, and (c) basis for award cost or price.

[59 FR 43760, Aug. 25, 1994, as amended at 62 FR 41878, Aug. 4, 1997]

§ 74.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 74.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts:

(a) Contracts in excess of the simplified acquisition threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the simplified acquisition threshold (currently \$100,000) shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction

contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the HHS awarding agency may accept the bonding policy and requirements of the recipient, provided the HHS awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by recipients shall include a provision to the effect that the recipient, the HHS awarding agency, the U.S. Comptroller General, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and

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their contractors shall contain the procurement provisions of appendix A to this part, as applicable.

[59 FR 43760, Aug. 25, 1994, as amended at 61 FR 11747, Mar. 22, 1996; 62 FR 41878, Aug. 4, 1997]

REPORTS AND RECORDS

§ 74.50 Purpose of reports and records.

Sections 74.51 through 74.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 74.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure that subrecipients have met the audit requirements as set forth in § 74.26.

(b) The HHS awarding agency will prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph (f) of this section, performance reports will not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the award year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The HHS awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report will not be required after completion of the project.

(d) Performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data

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should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall submit the original and two copies of performance reports.

(f) Recipients shall immediately notify the HHS awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) HHS may make site visits, as needed.

(h) The HHS awarding agency complies with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," when requesting performance data from recipients.

§ 74.52 Financial reporting.

(a) The following forms are used for obtaining financial information from recipients:

(1) SF-269 or SF-269A, Financial Status Report.

(i) The HHS awarding agency will require recipients to use either the SF-269 (long form) or SF-269A to report the status of funds for all nonconstruction projects or programs. The SF-269 shall always be used if income has been earned. The awarding agency may, however, waive the SF-269 or SF-269A requirement when the PMS-270, Request for Advance or Reimbursement, or PMS-272, Report of Federal Cash Transactions, will provide adequate information to meet its needs, except that a final SF-269 or SF-269A shall be required at the completion of the project when the PMS-270 is used only for advances.

(ii) If the HHS awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the